Supreme Court, U.S.
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No. 98-137

In The

Supreme Court of the United States

October Term, 1998

ERICA RESNER and MARY LOU RESNER,

Petitioners,

vs.

ARC MILLS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONERS

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REBUTTAL

The purpose of this Reply is to respond to allegations in respondent's brief that petitioners misstated facts, none of which are true.

It appears that once Arc resolved to fire Mary Lou they asked Herczfeld if he could handle the department. He gave the so-called "right" answer that he could. It turned out that he could not and was eventually fired. Mary Lou did continually voice the opinion that the department was understaffed and that assistance was necessary, partially due to the incompetence of Herczfeld.

The opinion of the district court plus testimony given at pre-trial depositions clearly indicate that Arc did, in fact, continually shop for less expensive medical insurance. (B 6) Arc went from Blue Cross to Chubb to Aetna within the span of about three years and made inquiries at Oxford only to be turned down specifically because of Erica. (B 6)

When Erica was injured Arc was covered by Chubb. Even after Mary Lou was fired they shopped for cheaper insurance and circulated a memo to their employees to this effect. Under the COBRA statutes Arc was required to keep Mary Lou and her dependents insured. During the period when Arc had to cover Mary Lou and her dependents, no carrier would take Arc's insurance though Chubb was legally obliged to keep them insured. Arc came up with the idea of trying to move the company to another carrier while leaving Mary Lou and Erica with Chubb, thereby living up to their legal obligations under COBRA. (B 6) They did not succeed. Eventually, though, social security took over coverage, Arc's COBRA obligations came to an end and Arc moved their insurance to another carrier, Aetna, at a savings of

about $90,000.00. This was testified to by Arc's's comptroller, Mr. Richard Kolson in his deposition dated October 12, 1995, page 161. Obviously, Arc did not change carriers for the fun of it but to save money. Add this $90,000.00 savings to the $30,000.00 saved by firing Mary Lou and it is obvious that Arc saved $120,000.00.

Furthermore, Mr. Kolson further testified that, as of the date of the deposition, Mary Lou's duties were being handled by Esther Monreau and Stu Frankel. (Kolson deposition dated 10/12/95, Page 76)

Petitioners are asserting no facts other than what came out at trial. Petitioners' grievance is that the trial court got so involved in finding that cost-cutting is a valid reason for firing someone that the obvious was overlooked, specifically that it made no sense to fire Mary Lou over Herczfeld unless consideration was given to Mary Lou's predicament and what it meant to Arc's bottom line.

Petitioners clearly made no misstatement.

CONCLUSION

For the reasons stated previously and herein, it is respectfully requested that this Honorable Court grant the petitioners' petition for a writ of certiorari.

Dated: New York, N.Y.
October 12, 1998

Respectfully submitted,

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